

1 **Kevin R. Martin, SBN 176853**

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4 **RANDICK O'DEA & TOOLIATOS, LLP**

5000 Hopyard Road, Suite 400

5 Pleasanton, California 94588

Telephone (925) 460-3700

6 Facsimile (925) 460-0969

7 Attorneys for Defendants, Counter Claimants and Third Party Claimants ROBERT E.  
ESTUPINIAN, GINNY ESTUPINIAN and MUTUAL VISION, LLC, and Defendants and  
8 Third Party Claimants MILLENNIUM REALTY GROUP, VESTA REVERSE 100, LLC,  
VESTA CAPITAL ADVISORS, LLC, EDMUNDO ESTUPINIAN, and HAYDEE  
9 ESTUPINIAN

10 **UNITED STATES DISTRICT COURT OF CALIFORNIA**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 **SAN JOSE DIVISION**

13 VESTA STRATEGIES, LLC,

14 Plaintiff,

15 vs.

16 ROBERT E. ESTUPINIAN, GINNY  
ESTUPINIAN, MUTUAL VISION, LLC,  
17 MILLENNIUM REALTY GROUP,  
VESTA REVERSE 100, LLC, VESTA  
18 CAPITAL ADVISORS, LLC, CAROL-  
ANN TOGNAZZINI, EDMUNDO  
19 ESTUPINIAN, and HAYDEE  
ESTUPINIAN,

20 Defendants.

21  
22 AND RELATED CROSS-ACTIONS.  
23

Case No.: C 07-06216 JW RS

**DECLARATION OF BRIAN M. O'DEA IN  
SUPPORT OF MOTION OF DEFENDANTS,  
COUNTER CLAIMANTS, AND THIRD  
PARTY CLAIMANTS ROBERT E.  
ESTUPINIAN AND GINNY ESTUPINIAN  
FOR AN ORDER COMPELLING  
PLAINTIFF/COUNTER DEFENDANT  
VESTA STRATEGIES, LLC AND  
COUNTER DEFENDANT/THIRD PARTY  
DEFENDANT JOHN TERZAKIS TO  
PRODUCE TAX RECORDS AND  
DOCUMENTS**

24  
25 I, Brian M. O'Dea, declare and state:

26 1. I am an attorney duly licensed by the State of California and admitted to practice  
27 before this Court.  
28

2. I am one of the attorneys for defendants, counter claimants and third party claimants Robert E. Estupinian and Ginny Estupinian.

3. After having been advised by my clients that the Internal Revenue Services was conducting an audit of their tax returns, and had demanded certain financial and tax documents of Vesta Strategies, LLC, I wrote a letter requesting the documents, dated April 21, 2008, to Aron J. Frakes and Daniel E. Alberti, attorneys for plaintiff and counter defendant Vesta Strategies, LLC, and counter defendant and third party defendant John Terazkis. A copy of that letter is attached hereto as Exhibit A.

4. Messrs. Frakes and Alberti ignored my letter and request.

5. I have been practicing law primarily as a business litigator if 38 years. I enjoy an AV rating from Martindale-Hubbell. I bill at the rate of \$325 per hour, which I believe is a reasonable rate for an attorney of my experience in the community where I practice.

6. I have spent 4.5 hours in preparing this motion, including research, interviewing for the drafting of declarations, and preparing the moving papers and the memorandum in support of the motion. I am therefore requesting an award of \$1,462.50 in attorney fees for having to bring this motion on behalf of my clients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30<sup>th</sup> day of April 2008, at Pleasanton, California.

/s/  
\_\_\_\_\_  
Brian M. O'Dea



RANDICK O'DEA  
&  
TOOLIATOS LLP  
ATTORNEYS AT LAW

April 21, 2008

**Via Facsimile & U.S. Mail**

Aron J. Frakes, Esq.  
McDermott Will & Emery  
227 West Monroe Street  
Chicago, IL 60606-5096  
Fax No.: (312) 984-7700

Daniel E. Alberti, Esq.  
McDermott Will & Emery LLP  
3150 Porter Drive  
Palo Alto, CA 94304-1212  
Fax No.: (650) 813-5100

**Re: *Vesta Strategies, LLC v. Estupinian, et al., and Related Cross-Actions/E0302.001***  
***United States District Court, Northern District of Calif. Case No.: C07-06216 JW RS***

Dear Messrs. Frakes & Alberti:

I am working with Kevin Martin on the above-referenced case. Our client is being audited and needs the following documents from Vesta Strategies, LLC:

1. 2006 Partnership Returns (1065) and all KI's for general and limited partners;
2. Schedule of Partners' bonuses, detailing all contributions, distributions, partner's share of partnership income and losses, liabilities and any adjustment affecting basis from the inception of the partnership to date;
3. Correspondence or documents for any adjustments to basis; and
4. K-1 for 2007.

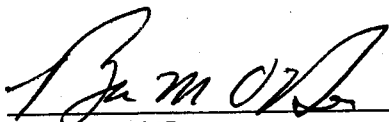
I believe that Mutual Vision, LLC as 49% owner has an unqualified right to these documents.

Please advise immediately if you are unwilling to make these documents available. We will then take the appropriate legal steps to secure them.

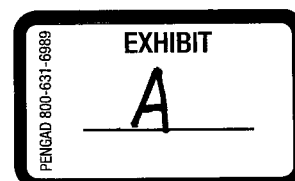
Very truly yours,

RANDICK O'DEA & TOOLIATOS, LLP

By

  
Brian M. O'Dea

BOD/ba



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Pleasanton, California 94588-3348  
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Fax 925-460-0969  
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**\*\* Transmit Confirmation Report \*\***P.1  
Line Number:2

Apr 21 2008 04:24pm

Fax:925-460-0969

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**Fax Cover Page****To:** Aron J. Frakes, Esq.  
Daniel E. Alberti, Esq.**Fax:** (312) 984-7700  
(650) 813-5100**From:** Brian M. O'Dea, Esq.**Date:** April 21, 2008**Sent By:** Becky Amedio**File#:** E0302.001**Pages:** 2**Re:** Vesta Strategies, LLC v. Estupinian, et al., and Related Cross-Actions  
United States District Court, Northern District of California Case No.: C07-06216 JW RS

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**Comments:**

Please see the attached letter.

**\*\* Transmit Confirmation Report \*\***P.1  
Line Number:2

Apr 21 2008 04:17pm

Fax:925-460-0969

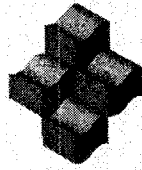
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Daniel E. Alberti, Esq.**Fax:** (312) 984-7700  
(650) 813-5100**From:** Brian M. O'Dea, Esq.**Date:** April 21, 2008**Sent By:** Becky Amedio**File#:** E0302.001**Pages:** 2**Re:** Vesta Strategies, LLC v. Estupinian, et al., and Related Cross-Actions  
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**Comments:**

Please see the attached letter.



RANDICK O'DEA  
&  
TOOLIATOS LLP  
ATTORNEYS AT LAW

## Fax Cover Page

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**To:** Aron J. Frakes, Esq.  
Daniel E. Alberti, Esq.

**Fax:** (312) 984-7700  
(650) 813-5100

**From:** Brian M. O'Dea, Esq.

**Date:** April 21, 2008

**Sent By:** Becky Amedio

**File#:** E0302.001

**Pages:** 2

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United States District Court, Northern District of California Case No.: C07-06216 JW RS

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**Comments:**

Please see the attached letter.

## Becky Amedio

---

**From:** Becky Amedio  
**Sent:** Monday, April 21, 2008 4:29 PM  
**To:** 'ajfrakes@mwe.com'  
**Cc:** Brian O'Dea  
**Subject:** Estupinian (E0302.001): Letter of April 21, 2008, from Mr. O'Dea  
**Attachments:** Letter of 4-21-08 to Messrs. Frakes & Alberti.pdf

Dear Mr. Frakes:

After an unsuccessful attempt at facsimile transmission, attached please find the letter of April 21, 2008, from Mr. Brian M. O'Dea. Please do not hesitate to contact Mr. O'Dea with questions or concerns. Thank you.

Please note my new e-mail address is [bamedio@randicklaw.com](mailto:bamedio@randicklaw.com).

**Becky Amedio**  
**Legal Secretary to**  
**Leslie A. Baxter, Esq. and**  
**Kevin R. Martin, Esq.**  
**Randick O'Dea & Tooliatos, LLP**  
Telephone 925-460-3700 | Fax 925-460-0969

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4/21/2008